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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. LOC PHUOC NGUYEN, Defendant and Appellant.	G041602 (Super. Ct. No. 07WF2264) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Steve Oetting and Theodore M. Cropley, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

INTRODUCTION

Loc Phuoc Nguyen (Defendant) pleaded guilty to one count of possession for sale of Ecstasy (Health & Saf. Code, § 11378) and one count of possession for sale of ketamine (*id.*, § 11379.2) and admitted the personal firearm use enhancement (Pen. Code, § 12022, subd. (b)(1)) after the trial court denied his motion to suppress evidence. Defendant's appeal challenges the denial of his suppression motion and is authorized by Penal Code section 1538.5, subdivision (m).

Defendant moved to suppress evidence seized during the execution of a search warrant on his home, which is part of a subdivided single-family residence, and during a vehicle search following a traffic stop. The trial court upheld both searches, and we affirm.

As to the search warrant, substantial evidence supported the trial court's findings that (1) before the search warrant was issued, the police officers obtaining the warrant did not know, and had no reason to know, the residence identified in the warrant was subdivided into multiple dwelling units, and (2) the police officers executing the warrant did not know, and did not have reason to know, the residence was subdivided into three units until after they had entered Defendant's unit and found the contraband that was the subject of Defendant's suppression motion. As to the vehicle search, the evidence at the suppression hearing supported a finding the police officer who conducted the search could point to specific articulable facts which, considered under the totality of the circumstances, provided some objective manifestation the vehicle was in violation of Vehicle Code section 26708, subdivision (a)(2).[1] Both searches were therefore lawful.

[1] Vehicle Code section 26708, subdivision (a)(2) is referred to as Vehicle Code section 26708(a)(2). It prohibits driving a motor vehicle with an object placed, displayed, installed, affixed, or applied in a way that "obstructs or reduces the driver's clear view through the windshield or side windows." (*Ibid.*)

FACTS FROM THE SUPPRESSION HEARING

I. *The Warrant*

On September 21, 2007, a search warrant was issued describing the following to be searched: "11331 Chapman, City of Garden Grove, County of Orange, State of California, and a person described as a male Vietnamese, 24 to 27 years old, five foot four to five foot seven, 130 to 150 pounds, short black hair, and a white Honda vehicle sedan, license number 4NNH189." The warrant also stated that "any additional vehicles found on or near the individual properties listed above" may be searched.

II. *Search of the Car*

Garden Grove Police Officer John Casaccia testified that in the afternoon of September 21, 2007, he was in his patrol car parked on a street within sight of the house described in the search warrant. He had been sent there to await instructions from police investigators.

About 4:00 p.m., having waited 10 to 15 minutes, Casaccia received instructions from police investigator Philip Schmidt and police officer Burillo to look for an Asian male driving a four-door black Honda Passport. Casaccia immediately drove off in his patrol car in search of the black Honda Passport.

Casaccia testified that after he saw the black Honda Passport travelling westbound on Chapman Avenue, he turned onto Chapman Avenue and followed the Passport for about two minutes. Casaccia testified that when he was about one car length behind the Honda Passport, he saw "an article" hanging from the rearview mirror that obstructed his own view through the Honda's windshield.

Although he could not identify the object and could not remember its dimensions or appearance, Casaccia thought it might have been a plastic parking pass attached to a rope. In his police report, he described the object as "large." The owner of the black Honda, Hanh Dang, testified the object hanging from the rearview mirror was a

"lady Buddha" charm attached to a cord. Casaccia testified the object was not a Buddha charm.

Casaccia concluded the item hanging from the rearview mirror constituted a violation of Vehicle Code section 26708, subdivision (a) and conducted a traffic stop. The driver of the Honda Passport was Defendant, and four other people, including Hanh Dang, were seated inside. When Defendant could not provide identification or a driver's license, Casaccia asked him to step out of the vehicle. Once Defendant was outside, Casaccia patted him down and took keys from Defendant's pocket on the premise they could be used as a weapon.

Thomas Murtaugh, a mechanical engineer specializing in motor vehicle accidents, testified as a defense expert. Murtaugh inspected the Honda Passport, measured the Buddha charm, and calculated how much obstruction, based on Defendant's height, would be caused by the Buddha hanging from the rearview mirror. Murtaugh testified the Buddha charm hanging from the rearview mirror would obstruct Defendant's view by about five square inches, or 1 to 3 percent of the visibility through the front windshield if the Buddha were swinging from side to side. If the Buddha were stationary, Murtaugh testified, it would obstruct 0.6 percent of the front windshield area.

A Department of Motor Vehicles search revealed that Dang was the registered owner of the Honda Passport. Dang confirmed she was the owner. In a monotone and conversational voice, Casaccia asked Dang for consent to search the black Honda Passport. She consented. Casaccia then asked Dang and the three other passengers to step out of the Honda Passport.

After Burillo arrived at the scene, Casaccia handcuffed Defendant and placed him in the backseat of the patrol car. Casaccia searched the black Honda Passport and found contraband he suspected to be narcotics.

III. *Investigation for the Warrant and Description of the Premises*

Before the warrant was issued, investigator Schmidt observed the house at 11331 Chapman Avenue to determine whether it was a single-family residence. He saw no doors to separate units at the house and did not see multiple mailboxes. He checked the utility bill for that address and it had only one customer's name on it.

Schmidt watched an informant or undercover police officer conduct a controlled buy of narcotics from Defendant. After the transaction, Schmidt followed Defendant to 11331 Chapman Avenue and there watched him park his white Honda sedan on the street and walk to the front door of the house. Schmidt stayed for another hour and saw the lights go off in the front portion of the house. In subsequent surveillances of 11331 Chapman Avenue, Schmidt twice saw the white Honda sedan parked on the street in front of the house. He never saw anyone other than Defendant enter or leave the premises.

Ken Nguyen, the owner of the house at 11331 Chapman Avenue, testified there were separate telephone numbers for each unit at the house. He testified he parked his car in front of the house while tenants parked their cars by their respective units. Nguyen purchased the property at 11331 Chapman Avenue, Garden Grove 14 months before the search. He did not know the main house was subdivided into three units before he bought it. The house had one address and a single mailbox for that address, and, from the street, there was no indication the house was subdivided. As of November 14, 2008, when Nguyen testified, there was a dispute with the City of Garden Grove as to whether subdivision permits should be allowed for the house.

Nguyen leased the unit at the rear of the house to Defendant and Dang. The rental agreement was entirely oral. Nguyen did not know their names—only that they were a man and a woman who drove a white Honda Accord. Nguyen lived in the front unit, Thai Hoang rented the side unit, and Defendant and Dang lived in the back unit.

Defendant and Dang had a separate entrance to their unit at the back of the house and separate keys to that entrance. From their unit, Defendant and Dang could not enter any other part of the house. Their keys did not allow them access to any other door, and only they had keys to their own unit.

IV. *Execution of the Warrant*

On September 21, 2007, a team of plainclothes policemen in unmarked cars arrived at 11331 Chapman Avenue to execute the search warrant. When the officers arrived, they saw nothing to indicate the house was anything other than a single-family house.

Before entering the house, Schmidt received a strand of keys from Casaccia. Schmidt was told the keys were from Defendant.

Schmidt assigned one team of police officers, which included investigator Donald Hutchins, to enter the house through the front door. Schmidt assigned another team to the east side, which appeared to be the garage, and another team to the backyard. Assigning teams of officers to create a safety perimeter around the building to be searched is standard police practice when executing a search warrant.

As the police officers talked in front of the house, a dark-colored sedan drove past and someone in the car yelled a profanity at them. At that point, each team went to its respective location around the house. Because the officers believed their search had been compromised, the police officers decided to save time by breaching the doors rather than by using the keys to enter the house.

The team assigned to the front entered the house by breaching the front door. Schmidt and his team assigned to the back waited for a signal from the team assigned to the front that they had secured the front part of the house. When no signal came, Schmidt, a police sergeant, and a police investigator entered the door at the back of the house in order to secure it. They used a key to open the door instead of breaching it because the door had a security screen, and they did not have the tool required to breach

doors with security screens. They tried several keys on the key strand taken from Defendant until one key opened the door.

Schmidt entered through the rear door into the part of the house in which Defendant lived. Inside, Schmidt found some contraband.

Hutchins testified that, when executing a narcotics search warrant, the officers' primary interest is to secure the inside of the house for safety. In the execution of this search warrant, he and the officers secured the house by walking through its interior. While walking through the house, Hutchins learned, possibly through a radio transmission, there were parts of the house to which he did not have access.

Hutchins told Schmidt he believed the primary suspect did not reside in the front part of the house. Someone asked Hutchins to go to the back of the house. Hutchins walked out the front door and around to the east side of the house. He noticed additional doors to the house, but did not see separate apartment letters or numbers on them or any other visible signs to indicate they led to separate units. Hutchins was told they had keys to the other doors of the house.

Schmidt, who now was assisting Hutchins, knocked on one of the doors, but nobody answered. Hutchins noticed an open window appearing to lead to the inside of the garage attached to the house and climbed through the window with the intent of securing the premises. It was later determined he had entered the part of the house in which Hoang lived. After climbing through the window, Hutchins unlocked the door from the inside to let Schmidt in to help secure the premises. Schmidt entered the house and found contraband. Hutchins also found contraband, including marijuana.

At some point, Hutchins realized the house was occupied by people living in separate rooms with separate entrances. He did not conclude, however, the house was divided into separate living units.

When Nguyen arrived at his house, he found his front unit in disarray, with clear signs of having been searched. He walked to the back of the house, where Schmidt

informed him of what was occurring. Schmidt asked Nguyen about his tenants and whether he had done a background check on them before leasing to them. Schmidt also told Nguyen the officers had found drugs and a gun on the property.

THE TRIAL COURT'S RULING

After hearing argument of counsel, the trial court made a lengthy and thoughtful ruling on the record. The court found:

"With respect to the execution of the warrant and the scope of that execution, I think that the officers arrived at the scene without any basis for understanding, knowing, or believing that there were multiple units on that property. I don't think that the officer who was the affiant had any reason to know, based on their—everything I've heard, and I think even as the officers arrived to execute the warrant they didn't have any reason to know. I think this was a dynamic, evolving situation.

"When they executed the warrant on the front unit, they began to have some understanding that the physical layout was not what they expected. I think that's what Hutchins' testimony strongly suggests, and I think that Schmidt's testimony supports that when you lay one over the other.

"The next unit they went to was [Defendant]'s unit in the very back, which was the L unit on the diagram that we've all been referring to which is Defendant's [exhibit] G. I think with respect to that portion of the activity, it is analogous to *Maryland v*[.] *Garrison* [(1987) 480 U.S. 79 (*Garrison*)].

"I think it became evident to the officers as they entered and began to do whatever they were doing in that unit—I think it's important to listen to the testimony, to go back to what you said, . . . for credibility reasons, but I don't think it's important in my analysis to agree with whatever it was that the witnesses said they were doing in terms of the legal description of it, whether it was a security sweep or a search. I think I have to

decide whether or not they have a legal right to be where they were, doing what they were doing, whether or not they called it by the right name or not.

"I think at that point it was a dynamic, evolving process. And I think when the officers entered unit L, [Defendant]'s unit, they were beginning to develop some understanding that this was a different kind of layout. . . . [And the officer] testified . . . it looked like a makeshift apartment . . . . There were some bedrooms, a stove, a TV. And when he was digesting what he was seeing, I think he began to realize he was not dealing with a single family residence.

"At the time he entered, it was not clear. That's why I think it is analogous to . . . *Garrison*. If you recall, at the time they entered, the Supreme Court did not find that entry illegal because the officers did not know what they were dealing with. As soon as they knew what they were dealing with and digested and recognized that they were in somebody else's house, from that point on they couldn't search anymore.

"And that's exactly what I'm finding to be the case in this case once it occurred to me—and I think it's after they entered unit L [Defendant's unit], the very rear unit, it became clear to them like it did to the searching officers in . . . *Garrison* they were not in a single family residence anymore. And it was after that that they came out and entered the last of the three units which we have been referring to as, I think, the T unit [Hoang's unit].

"According to my notes, that's the T unit that the officer entered by crawling into the window. I think it's Mr. Hoang's residence. By the time entry was made into Mr. Hoang's residence, the officers knew or reasonably should have known that that was a multi-family building. . . ."

After discussing *Garrison*, the court concluded:

"I do find that entry was permissible into the L unit [Defendant's unit] pursuant to . . . *Garrison*, using that analysis. . . . [A]lthough it's a separate unit, the

L unit is, I'm finding the question is really whether or not the officer knew at the time of the entry what they knew and when they knew it, to paraphrase an old saying.

"And I'm finding that at the time they entered, again, it was analogous to . . . *Garrison*. And while they were in there, the thoughts sort of coagulated and became clear that that was a situation in which they were in somebody else's house. But entry into the L unit and the K unit was permissible. Entry into the T [side] unit was not. [¶] . . . [¶]

"The motion to suppress evidence seized from the K unit and the L unit [Defendant's unit] is denied."

The trial court also denied the motion to suppress evidence seized from the Honda Passport. The court found the stop of the Honda Passport was a "pretext" stop but was valid: "The *Whren* [*v. United States* (1996) 517 U.S. 806] case pretty clearly said even if the police are looking for a reason to stop a vehicle that they would not otherwise have been interested in, if they have a Vehicle Code violation or other legitimate reason to stop the vehicle, then the fact they were looking for the reason does not invalidate the stop. And I think that's the situation we're talking about here. I did some analysis for you this morning about the application of [Vehicle Code section] 26708, and I think that that justifies that stop."

STANDARD OF REVIEW

In reviewing the denial of a suppression motion, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) "In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*Ibid.*) Whether a warrant describes the premises to be searched with sufficient particularity is a legal question which we independently review. (*People v. Minder* (1996) 46 Cal.App.4th 1784, 1788.)

DISCUSSION

I. *The Search Warrant and Its Execution*

Defendant contends the trial court erred in denying his motion to suppress for these reasons: (1) the search warrant was constitutionally invalid when issued because it failed to describe with sufficient particularity the place to be searched within a multiunit residence; and (2) the manner of the warrant's execution violated his constitutional rights because the executing officers searched his dwelling area after they knew or had reason to know the house was subdivided into a multiunit residence.

A. *Validity of the Warrant*

Both the United States Constitution and the California Constitution require that search warrants particularly describe the place to be searched and the persons and things to be seized. (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13.) "The description in a search warrant must be sufficiently definite that the officer conducting the search 'can with reasonable effort ascertain and identify the place intended.'" (*People v. Dumas* (1973) 9 Cal.3d 871, 880, quoting *Steele v. United States* (1925) 267 U.S. 498, 503.)

"By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the [particularity] requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is 'defined by the object of the search and the places in which there is probable cause to believe that it may be found.'" (*Garrison*, *supra*, 480 U.S. 79, 84, fn. omitted.)

Garrison is the seminal case on the validity of a warrant to search a multiunit residence. There, police officers obtained a warrant to search the person of Lawrence McWebb and "'the premises known as 2036 Park Avenue third floor apartment.'" (*Garrison*, *supra*, 480 U.S. at p. 80.) When the police officer applied for

the warrant, he reasonably believed there was only one apartment on the premises described in the warrant. (*Id.* at p. 81.) In fact, the premises described in the warrant were divided into two apartments, one occupied by McWebb and the other occupied by Garrison. (*Id.* at p. 80.) While executing the warrant, as the police officers entered the vestibule on the third floor, they could see into McWebb's apartment to the left and into Garrison's apartment to the right. (*Id.* at p. 81.) Only after entering Garrison's apartment and finding heroin, cash, and drug paraphernalia did the officers realize the third floor had two apartments. (*Ibid.*) At that moment, they discontinued the search. (*Ibid.*)

The Supreme Court addressed two issues: (1) was the warrant invalid because the description of the place to be searched was overbroad, and (2) did the manner of executing the warrant violate Garrison's Fourth Amendment rights. (*Garrison*, *supra*, 480 U.S. at pp. 84, 86.) On the first issue, the court concluded the warrant was constitutionally valid despite the mistake in describing the premises to be searched. (*Id.* at p. 86.) The validity of the warrant and constitutionality of the police officers' conduct must be assessed based on the information the officers disclosed, or had a duty to discover and disclose, to the magistrate issuing the warrant. (*Id.* at p. 85.) Before seeking the warrant, the police officer verified information obtained from a reliable informant, made an exterior examination of the building at the address identified in the warrant, and made an inquiry of the utility company. (*Id.* at p. 81.) The officer reasonably concluded on the basis of that information there was only one apartment on the third floor and it was occupied by McWebb. (*Ibid.*)

On the second issue, the Supreme Court concluded execution of the warrant did not violate Garrison's Fourth Amendment rights. The officers' failure to recognize the warrant's overbreadth was objectively reasonable based on facts suggesting no distinction between McWebb's apartment and Garrison's apartment, and "[p]rior to the officers' discovery of the factual mistake, they perceived McWebb's apartment and the third-floor premises as one and the same . . . ." (*Garrison*, *supra*, 480 U.S. at p. 88.)

Therefore, the officers' execution of the warrant reasonably included the entire third floor. (*Id*. at pp. 86, 88.) The limits of the search were based on information available as the search progressed: Once the officers realized the third floor contained two apartments, they were obligated to, and did, discontinue the search. (*Id.* at p. 87.)

In this case, the trial court found that before the warrant was issued, the police officers did not know, and had no reason to know, the house at 11331 Chapman Avenue was subdivided into multiple dwelling units. Substantial evidence supported that finding. The house at 11331 Chapman Avenue was a detached, single-family residence with a single address and a single mailbox. Schmidt testified he observed the house to determine whether it was a single-family residence before the warrant was issued and saw no doors to separate units or multiple mailboxes. He checked the utility bill for that address and noted only one customer's name appeared on it. During surveillance, Schmidt saw Defendant on several occasions park in front of the house and enter through the front door. Schmidt saw no one other than Defendant enter or leave the house. Nguyen, the owner of the residence, did not know when he purchased it that it was subdivided into three units and confirmed that, from the street, there was no indication the house was subdivided.

United States v. Noel (6th Cir. 1991) 938 F.2d 685 and *United States v. Maneti* (W.D.N.Y. 1991) 781 F.Supp. 169 (*Maneti*) are analogous. In *Noel*, *supra*, 938 F.2d at page 686, the warrant authorized a search of "'a single family dwelling commonly known as 751 Richmond.'" On execution of the warrant, it was learned that the dwelling had been subdivided into three separate units. (*Ibid.*) In upholding the warrant, the Sixth Circuit Court of Appeals stated: "At the time [the] officers executed the warrant, the rear units had no exterior designations or identifying addresses, nor were they equipped with separate mailboxes. Hence, there existed no outward indication that the facility located at 751 Richmond Avenue was other than a single-family dwelling." (*Ibid.*)

In *Maneti, supra*, 781 F.Supp. at page 172, the defendant moved to suppress evidence seized pursuant to a search warrant of his home at 3457 Latta Road on the ground the premises at that address was a two-family dwelling of which he occupied only the front unit. Before obtaining the warrant, the law enforcement agents determined the defendant lived at that address and visually inspected the premises from the street. (*Id.* at p. 173.) Observing the residence from a car, the law enforcement agents saw a white, two-story, colonial-style home with one front entrance, and one mailbox with the numbers 3, 4, 5, and 7. (*Ibid.*)

The district court denied the motion to suppress, concluding the warrant described the premises to be searched with sufficient particularity. (*Maneti, supra,* 781 F.Supp. at p. 183.) The court summarized *Garrison* and other authority on the particularity requirement for multiunit residences as follows: "[C]ourts have long recognized an exception to the particularity requirement concerning premises that contain multiple units: if the building in question appears to be a single-family structure and the investigating officers neither knew nor had reason to know of the structure's actual multiple-occupancy character until execution of the warrant was under way, then the warrant is not defective for failing to specify a particular subunit. In other words, if the premises appears to be something that it is not, then the officers can rely on what the premises reasonably appears to be." (*Maneti, supra,* 781 F.Supp. at pp. 179-180.) The district court concluded the law enforcement agents were entitled to rely on the outward appearance of the residence in applying for the warrant. (*Id.* at p. 179.) The residence at 3457 Latta Road had no visible separate doorbells, mailboxes, "speaking tubes," nameplates, or apartment numbers to indicate multiple residency, and such lack of "normal external indicia of multiple occupancy" supported the contention the agents had no reason to believe the residence contained two separate apartments. (*Id.* at p. 181.)

Here, as in *United States v. Noel* and *Maneti*, the house at 11331 Chapman Avenue had no outward indication it was anything other than a detached, single-family

residence and had no normal external indicia of multiple occupancy. Before obtaining the warrant, Schmidt observed the house, saw no doors to separate units or multiple mailboxes, and checked the utility bill. We conclude the warrant in this case satisfied the constitutional requirement of particularity at the time it was issued.

B. *Execution of the Warrant*

As for the execution of the warrant, the trial court found the officers did not know, and did not have reason to know, the house at 11331 Chapman Avenue was subdivided into three units until after they had entered Defendant's unit and found the contraband. Substantial evidence supported that finding. At the outset of executing the warrant, Schmidt decided to secure the perimeter of the residence by assigning one team of police officers to enter through the front door, another team to secure and enter through the rear door (which led into Defendant's unit), and a third team to secure the east side (which appeared to be the garage). This was standard procedure, and was undertaken to prevent someone from escaping through a rear or side door, and not out of the belief the residence was divided into separate dwelling units.

Schmidt and his team assigned to the back waited for a signal from the team assigned to the front that they had secured that part of the residence. When no signal came, Schmidt and two other officers entered the door at the back of the residence to secure it. To open the door, they used a key from the strand of keys seized from Defendant, but had no reason to know at that point the key could only open the rear door. After entering through the rear door into the part of the house in which Defendant lived, Schmidt found the contraband. Only after entering Defendant's unit did the officers begin to understand the house had been subdivided into three separate dwelling units.

As the trial court found, the officers' entry into Defendant's unit at the rear of the residence was analogous to the situation in *Garrison*, where the officers entered Garrison's apartment before realizing it was separate from McWebb's apartment. In this case, "[p]rior to the officers' discovery of the factual mistake, they perceived

[Defendant's dwelling unit] and the [rest of the residence] as one and the same." (*Garrison, supra,* 480 U.S. at p. 88.) We conclude the execution of the search warrant did not violate Defendant's constitutional rights.

II. *The Vehicle Search*

Defendant contends the trial court erred in denying his motion to suppress evidence seized during the search of the black Honda Passport because Casaccia, who stopped and searched it, had no specific articulable facts showing a traffic violation had occurred.

A police officer may lawfully stop a motorist to conduct a brief investigation if the facts and circumstances known to the officer support at least a reasonable suspicion the driver has violated the Vehicle Code or some other law. (*People v. Superior Court* (1972) 7 Cal.3d 186, 200.) "Reasonable suspicion" is a standard less demanding than probable cause. (*Alabama v. White* (1990) 496 U.S. 325, 330.) The California Supreme Court has articulated this standard for determining the reasonableness of a stop: "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231.)

So-called "pretext stops" may be permissible: The officer's subjective intent or ulterior motive in stopping a vehicle is irrelevant to the legality of the stop. (*Whren v. United States, supra,* 517 U.S. 806, 812-813.)

Casaccia stopped the black Honda Passport on the ground it was being operated in violation of Vehicle Code section 26708(a)(2), which provides: "A person shall not drive any motor vehicle with any object or material placed, displayed, installed, affixed, or applied in or upon the vehicle that obstructs or reduces the driver's clear view through the windshield or side windows."

We conclude Casaccia's testimony at the suppression hearing did "point to specific articulable facts" which, considered under the totality of the circumstances, provided "some objective manifestation" that the object hanging from the rearview mirror of the black Honda Passport obstructed or reduced Defendant's view in violation of Vehicle Code section 26708(a)(2). (*People v. Souza, supra,* 9 Cal.4th at p. 231.) Cassacia testified that when he was about one car length behind the black Honda Passport, he saw an item hanging from the rearview mirror that obstructed his own view through the Honda's windshield. Although he could not identify the object and could not remember its dimensions or appearance, he thought it might have been a plastic parking pass, and described the object as "large" in his police report. The owner of the Honda Passport, Dang, testified that a lady Buddha charm, identified as exhibit B, was the only object hanging from the rearview mirror when the car was stopped. However, Casaccia denied the object hanging from the rearview mirror was the lady Buddha charm and, in any case, the lady Buddha charm would have obstructed the driver's view if it were hanging from the Honda Passport's rearview mirror.

We presume the trial court found Casaccia to be a credible witness and impliedly found the object hanging from the rearview mirror of the black Honda Passport was a large plastic parking pass or similar object. (*People v. Glaser, supra*, 11 Cal.4th at p. 362.) Casaccia's testimony that the parking pass hanging from the rearview mirror obstructed his own view through the windshield of the black Honda Passport provided sufficient justification for the stop.

Our conclusion would be the same if the trial court had expressly found the lady Buddha charm was hanging from the rearview mirror of the black Honda Passport. Casaccia testified the object hanging from the Honda's rearview mirror, whether a parking pass or a lady Buddha charm, obstructed his view through the Honda's windshield. Although Murtaugh testified the lady Buddha, if swinging, would cause an obstruction of only 1 to 3 percent of visibility through the front windshield, under

Vehicle Code section 26708(a)(2), an object need only obstruct *or reduce* the driver's clear view. An obstruction of 1 to 3 percent (0.6 percent if the lady Buddha charm were stationary) does reduce the driver's visibility. The trial court might have chosen to disregard Murtaugh's testimony, and instead believe Casaccia, who testified the lady Buddha charm would obstruct the driver's view through the windshield.

Further, the possibility the lady Buddha charm (or whatever object was hanging from the rearview mirror) might not have obstructed the driver's view did not deprive Casaccia of the ability to entertain a reasonable suspicion a violation of Vehicle Code section 26708(a)(2) had occurred. To initiate a traffic stop, the police officer need only have a reasonable suspicion a Vehicle Code violation occurred; the officer is not required to be right. (See *People v. Souza*, *supra*, 9 Cal.4th at pp. 230-231.)

Defendant relies on *People v. White* (2003) 107 Cal.App.4th 636 (*White*), one of two opinions dealing with tree-shaped air fresheners hanging from rearview mirrors. In *White*, the Court of Appeal held it was not reasonable for the police officer to believe such an air freshener hanging from the rearview mirror constituted a violation of Vehicle Code section 26708, subdivision (a). (*White*, *supra*, 107 Cal.App.4th at p. 642.) The police officer stopped a car driven by defendant Fishbain on the ground the tree-shaped air freshener hanging from the rearview mirror constituted a violation of Vehicle Code section 26708, subdivision (a). (*White, supra*, 107 Cal.App.4th at p. 641.) Fishbain and defendant White, who was a passenger in the car, moved to suppress contraband and other evidence seized when the police officer searched the car following the stop. (*Id.* at pp. 639-640.)

At the suppression hearing in *White*, the police officer testified he observed the tree-shaped air freshener, which remained in a stationary position, while following Fishbain's car. (*White*, *supra*, 107 Cal.App.4th at p. 641.) The police officer did not testify that the air freshener obstructed the driver's view or that Fishbain was driving in a manner suggesting his view was impaired. (*Id.* at p. 642.) The defendants presented

testimony from a civil engineer that the air freshener covered less than .05 percent of the total surface of the car's windshield and that, based on the relative sizes of the air freshener and the windshield, the air freshener would not obstruct the view of a six-foot-tall driver. (*Ibid.*) Fishbain testified the air freshener did not obstruct his view, and the trial court stated it had "'difficulty accepting'" these "ubiquitous" air fresheners would actually obstruct a driver's view. (*Ibid.*) The Court of Appeal reversed the trial court's order denying the defendants' motions to suppress, concluding, based on the evidence at the suppression hearing, "it was not reasonable for the officer to believe that the object he observed may have obstructed or reduced the driver's clear view." (*Ibid.*)

In the other air freshener case, *People v. Colbert* (2007) 157 Cal.App.4th 1068, 1070 (*Colbert*), the Court of Appeal held a police officer had a reasonably objective basis for his belief a tree-shaped air freshener, similar to the one in *White*, constituted a violation of Vehicle Code section 26708(a)(2). The *Colbert* court affirmed an order denying a motion to suppress because "[t]he evidence before the magistrate in this case contained precisely what was missing in *White* and did not include any of the evidence that supported the defense argument in *White*." (*Colbert, supra*, 157 Cal.App.4th at p. 1073.) At the suppression hearing, the police officer testified that "[a]s he passed an older, white Oldsmobile, he 'observed an item hanging from the rear view mirror in the vehicle' that he believed was 'large enough to obstruct [the driver's] view through the front windshield.'" (*Id.* at p. 1070.) The officer described the item hanging from the rearview mirror as "a flat air freshener shaped like a tree" hanging from a string or thread and gave the air freshener's precise dimensions. (*Ibid*.) He testified that through personal experience, he knew an object the size of the air freshener could obstruct the driver's view even of large objects such as vehicles or pedestrians. The officer had removed a similar-sized object that he had hung from the rearview mirror in his personal vehicle because it obstructed his view. (*Ibid.*)

The police officer's testimony, unlike the police officer's testimony in *White*, provided "specific and articulable facts that supported an objectively reasonable conclusion that the hanging air freshener in defendant's vehicle violated Vehicle Code section 26708, subdivision (a)(2)." (*Colbert*, *supra*, 157 Cal.App.4th at p. 1073.) In addition, the Court of Appeal stated, there was no defense evidence that the air freshener did not obstruct the driver's view. (*Ibid.*)

Between *White* and *Colbert*, the facts in this case come closer to those of *Colbert*. Casaccia, unlike the police officer in *White*, testified the object hanging from the rearview mirror obstructed his own view through the windshield of the Honda Passport. Here, unlike in *White*, there was no testimony from Defendant, who was driving the black Honda Passport, that the lady Buddha charm did not obstruct or reduce his view through the windshield. The trial court did not err in denying Defendant's suppression motion.

DISPOSITION

The judgment is affirmed.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.